

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

INDEX

Falls Church, Virginia 22041

File: [REDACTED] - Laredo

Date:

AUG 14 1997

In re: [REDACTED]

IN EXCLUSION PROCEEDINGS

APPEAL

ON BEHALF OF APPLICANT: Jose Salvador Tellez, Esquire
P.O. Box 6658
Laredo, Texas 78042

ON BEHALF OF SERVICE: Claire W. Matecko
Assistant District Counsel

EXCLUDABLE: Sec. 212(a)(7)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(7)(A)(i)(I)] -
No valid immigrant visa

APPLICATION: Abandonment of lawful permanent resident status

The record reflects that the applicant was a special agricultural worker ("SAW") who received permanent resident status on July 22, 1992 (Tr. at 8, 18). On December 8, 1994, he was stopped at a port of entry to the United States when traveling from Mexico by an immigration official when he attempted to enter as a returning lawful permanent resident (Tr. at 7-8; I.J. at 1, 2). The immigration inspector believed that the applicant was excludable as he had never established a lawful permanent residence in the United States.

In a May 2, 1996, decision an Immigration Judge found that the applicant had never established a residence in the United States, and had failed to comply with relevant reporting requirements required to establish himself as a commuter alien (I.J. at 4). The Immigration Judge also found that, contrary to his argument otherwise, there was available no other method in which the applicant could have acquired commuter status (I.J. at 5). As the applicant could not be considered a commuter and had failed to establish a residence in the United States within a reasonable period after having been admitted to do so, he was found properly excludable on the charge (I.J. at 5).

The applicant's sole contention on appeal is that the Immigration Judge erred by concluding that commuter status is an administrative device requiring compliance with administrative guidelines in order to obtain commuter status (Notice of Appeal). The applicant asserts that there is no established statutory or regulatory procedure to acquire the status of commuter (Notice of Appeal). Therefore, the applicant argues that an alien does not have to comply with the relevant requirements in order to obtain commuter status (Notice of Appeal). Although the applicant indicated that he would file a brief in support of his appeal, none was forthcoming. The applicant's request for oral argument is denied. See 8 C.F.R. § 3.1(e) (1997).

[REDACTED]

Initially we note that the applicant admittedly adjusted his status in 1992 to that of a lawful permanent resident (Tr. at 8, 18). Although that adjustment occurred through the SAW program, the applicant thereafter acquired all the rights, and corresponding responsibilities, of a lawful permanent resident and was no longer subject to the requirements imposed upon aliens in SAW status. Therefore, we shall review the applicant's claim that he independently acquired commuter status in light of the regulations, statutes, and case law pertaining to lawful permanent residents.

The relevant regulation provides that a lawful permanent resident may reside in foreign contiguous territory and commute as a special immigrant to his place of employment in the United States. 8 C.F.R. § 211.5(a); see also section 101(a)(27)(A) of the Immigration and Nationality Act (noting that the term "special immigrant" means, in pertinent part, an immigrant lawfully admitted for permanent resident who is returning from a temporary visit abroad). Such commutation may be daily or seasonal for employment which, generally, is regular and stable. Id. That regulation mandates that, at the time of each reentry, the commuter must present a valid Form I-551 or I-688 in lieu of an immigrant visa. Id.

Contrary to the applicant's argument otherwise, a lawful permanent resident is required to file for a replacement alien registration card when he is taking up commuter status. 8 C.F.R. § 264.5(b)(5). The regulations mandate that an application for a replacement alien registration card must be filed on an enumerated form, accompanied by requisite evidence and filing fee. 8 C.F.R. § 264.5(a) (emphasis added). No provision is made for a lawful permanent resident to unilaterally and independently acquire commuter status. Immigration and Naturalization Service Operation Instructions ("OI") regarding alien commuters mandate that every commuter file an address report, even if the actual residence is outside of the United States. OI 211.3, 211.4. This requirement mirrors the requirement in 8 C.F.R. § 211.5(a) that an alien commuter's address report under section 265 of the Act must show his actual residence address.

Thus, contrary to the applicant's assertions otherwise, there is a specific regulatory mandate that a lawful permanent resident comply with an enumerated application process in order to acquire commuter status. See Matter of Sanchez, 17 I&N Dec. 218, 219 (BIA 1980) (noting that the respondent executed the requisite form in order to have his alien registration receipt card modified to designate him as a commuter). This is underscored by the requirement that an alien-commuter establish that he remains eligible for such status. See 8 C.F.R. § 211.5(b); OI 211.14. The OI also call for the maintenance of monthly statistical information on alien commuters, which clearly could not occur if lawful permanent residents were able to unilaterally create such a status in themselves without any registration with the Service. OI 211.14. Accordingly, we find that the Immigration Judge correctly found that the applicant had failed to comply with relevant registration requirements and, thus, had not obtained commuter status. Therefore, his appeal will be dismissed.

ORDER: The appeal is dismissed.



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